

Opinion of SOUTER, J.

SUPREME COURT OF THE UNITED STATES

No. 03–9046

CHARLES RUSSELL RHINES, PETITIONER *v.*
DOUGLAS WEBER, WARDEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[March 30, 2005]

JUSTICE SOUTER, with whom JUSTICE GINSBURG and JUSTICE BREYER join, concurring in part and concurring in the judgment.

I join the Court’s opinion with one reservation, not doctrinal but practical. Instead of conditioning stay-and-abeyance on “good cause” for delay, *ante*, at 7, I would simply hold the order unavailable on a demonstration of “intentionally dilatory litigation tactics,” *ante*, at 8. The trickiness of some exhaustion determinations promises to infect issues of good cause when a court finds a failure to exhaust; *pro se* petitioners (as most habeas petitioners are) do not come well trained to address such matters. I fear that threshold enquiries into good cause will give the district courts too much trouble to be worth the time; far better to wait for the alarm to sound when there is some indication that a petitioner is gaming the system.